NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MAC No. 1139 of 2014

(Arising out of order dated 19.04.2014 passed by the learned Motor Accident Claims Tribunal, Korba, (C.G.) in Claim Case No. 284/2011)

1. Savitri Bai W/o Late Kulkitram Aged About 52 Years R/o Parsabhatha, Balco Nagar, P.S. Balco Nagar, Distt. Korba C.G., Chhattisgarh
2. Dashrath Sahu S/o Late Kulkitram Aged About 34 Years R/o Parsabhatha, Balco Nagar, P.S. Balco Nagar, Distt. Korba C.G., District : Korba, Chhattisgarh
3. Komal Prasad Sahu S/o Late Kulkitram Aged About 30 Years R/o Parsabhatha, Balco Nagar, P.S. Balco Nagar, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Appellants

Versus

1. Ishwar Prasad Jangde S/o Govind Ram Jangde Aged About 38 Years R/o Ranpota, Post- Marghati, P.S. Hasaud, Distt. Janjgir-Champa C.G., Chhattisgarh
2. The Oriental Insurance. Co. Ltd. Through - Divisional Manager, The Oriental Insu.Co.Ltd., Divisional Office, Old Bus Stand, Geetanjali Bhawan, Korba, Distt. Korba C.G., District : Korba, Chhattisgarh

---- Respondents

For Appellants	: Shri A. S. Rajput, Advocate.
For Respondent No. 2	: Shri Raj Awasthi, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

Per Parth Prateem Sahu, Judge

16.03.2021

1. Correctness and sustainability of the impugned award dated 19.09.2014 passed by the Motor Accident Claims Tribunal, Korba (C.G.) in Claim Case No.284/2011 is put to challenge in this appeal, whereby, the learned Claims Tribunal allowed the application for grant of compensation in part awarded Rs.1,41,400/- as a total compensation in a fatal accident case. The learned Claims Tribunal while exonerating the Insurance Company from its liability, fastened liability upon the Non-Applicant No.1 Owner/Driver of the offending vehicle.

2. Facts relevant for disposal of this appeal are that on 16.05.2011, when Kulkit Ram was driving on his motor cycle and going to village Minauri while so one Tata Magic bearing Registration No.CG 11/AB/1468 driven by Non-Applicant No.1 dashed the motorcycle and caused accident. In the said accident, Kulkit Ram suffered grievous injuries, he was taken to hospital where he succumbed to the injuries during the course of treatment. Claimants/Appellants who are widow and children of the deceased filed an application under Section 166 of the Act of Motor Vehicles Act, 1988 pleadings therein that on the date of accident, the deceased was aged about 57 years, working as an agriculturist and earning Rs.3,00,000/- p.a., and claimed total compensation of Rs.31,40,000/- from the Non-Applicants.

3. Non-Applicant No.1 submitted reply to the claim application while denying the pleadings made therein has further pleaded that the accident was a result of negligence on the part of driver of the motor cycle as he was driving under the influence of liquor. It was further pleaded that on the date of accident the offending vehicle was insured with Non-Applicant No.2/Insurance Company as such the liability, if any, would be upon the Insurance Company to satisfy the amount of compensation.

4. Non-Applicant No.2/Insurance Company submitted reply to the claim application while denying the pleadings made therein further pleaded that there was breach of policy conditions as on the date of accident, the driver of the offending vehicle was not possessed with valid and effective driving license and there was no valid permit for plying the vehicle on public road. The learned Claims Tribunal on appreciation of pleadings and evidence brought on record by the respective parties held that Kulkit Ram died on account of the motor accidental injuries suffered by him due to rash and negligent driving of the offending vehicle by Non-Applicant No.1. Breach of Policy conditions was found to be proved on the ground that on the date of accident, Non-Applicant No.1 was driving the light goods vehicle where as

the license possessed by him was for motorcycle and light motor vehicle only. The learned Claims Tribunal considering the income of the deceased as Rs.30,000/- p.a., the deceased to be in the age group of 60-65 years, calculated the amount of compensation and awarded total sum of Rs.1,41,400/-.

5. Shri A. S. Rajput, learned counsel for the Appellants submits that the learned Claims Tribunal erred in awarding meager amount of compensation, the income of the deceased has been assessed much on the lower side overlooking the oral and documentary evidence placed on record as well as the age of the deceased on the date of accident. He further submits that the learned Claims Tribunal has not awarded any amount of compensation on the head of future prospects because on the date of accident the deceased was in between age of 56-60 years hence as per the ruling of Hon'ble Supreme Court in case of ***National Insurance Company Limited v. Pranay Sethi & Another***, reported in **(2017) 16 SCC 680,** there will be an addition of 10% of the income of the deceased. He further contended that the learned Claims Tribunal has not awarded proper/just amount of compensation on the other conventional heads. The learned Claims Tribunal has awarded meager amount of Rs.25,000/- on the other conventional heads, which is also on lower side in the light of rulings of the Hon'ble Supreme Court in **Pranay Sethi (supra)** and ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**. It is further contended that the learned Claims Tribunal erred in exonerating the Insurance Company from its liability on the ground of license. The Claims Tribunal on appreciation of the documentary evidence placed on record has arrived at a conclusion that Non-Applicant No.1 was possessed with license authorizing him to drive motorcycle and light motor vehicle, but considering the offending vehicle driven by the Non-Applicant No.1 to be a light goods vehicle held that Non-Applicant No.1 was not

possessed with valid and effective license to drive the offending vehicle, which is not correct in view of the law laid down by the Hon'ble Supreme Court in ***Mukund Dewangan Vs Oriental Insurance Company Limited*** reported in ***(2017) 14 SCC 663***. He also pointed out that the age of the assessed by the Tribunal in between 60-65 years is also contrary to the evidence available on record. Wife of the deceased in her evidence has categorically stated that on the date of accident deceased was 57 years of age, the Post Mortem Report placed on record as Ex.P-6 also mentioned the age of the deceased as 60 years only. Hence the age of the deceased ought to have been taken in between 56-60 years and the proper multiplier of 9 ought to have been applied in facts of the case.

6. Shri Raj Awasthi, learned counsel appearing for Respondent No.2/Insurance Company while opposing the submissions made by the learned counsel for the Appellants submits that the income of the deceased has been shown from the agricultural property and even after the death of the owner agricultural property will remain their with family from which the Appellants can earn the income, therefore, the learned Claims Tribunal has not erred in assessing the income of the deceased as Rs.30,000/- p.a. He further contended that there is no specific and admissible piece of evidence on record to consider the age of the deceased to be less than 60 years. Hence, the learned Claims Tribunal was well justified in assessing the age of the deceased. The submissions made by the learned counsel for the Appellants with regard to the license, he submits that the law laid down by Hon'ble Supreme Court in **Mukund Dewangan (supra)** had already been referred to the Larger Bench, which is under consideration and hence the Appellants could not get any benefit from the ruling in the case of **Mukund Dewangan *(supra)*** now***.***

7. We have heard learned counsel for the respective parties.

8. So far as the submission made by the learned counsel for the Appellants with regard to the income of the deceased is concerned, age of the deceased as mentioned in the Post Mortem Report (Ex.P-6) was 60 years on the date of accident. The learned Claims Tribunal has considered that as per Ex.P-11, appellants have placed on record the documents of agricultural property mentioning 2.245 hectares at village Minauri in the name of deceased. Even if the agricultural property on which the deceased was doing the agricultural activities was there with the Appellants but then some work of labourer, or supervising the field deceased might be doing, for those works, some other person is to be engaged and therefore, we find it appropriate to hold that the deceased might be doing atleast the work of labourer over the field. Taking note of the date of accident i.e., 16.05.2011, we find it appropriate to reckoned the income of deceased as Rs.4,000/- per month. With regard to the submissions made by the counsel for the Appellants assessing age of the deceased, wife of the deceased was examined before the learned Claims Tribunal as AW-1, who in her evidence stated the age of the deceased to be 57 years, the same age is also been pleaded in the claim application. Though no documentary evidence has been placed on record by the Appellants to prove the age but taking into consideration the age assessed by the Doctors who conducted the Post Mortem, i.e., 60 years, we find it appropriate to hold the deceased to be in the age group of 56-60 years and as such the appropriate multiplier would be 9 instead of 5 as applied by the learned Claims Tribunal. The learned Claims Tribunal has awarded only Rs.25,000/- towards other conventional heads, i.e., Rs.10,000/- towards funeral expenses, Rs. 5,000/- towards loss of estate and Rs.10,000/- towards loss of consortium. The award of amount of compensation on other conventional heads has been considered by the Hon'ble Supreme Court in **Pranay Sethi (supra) and Magma General Insurance Company Limited (supra).** The amount of compensation to be

awarded under other conventional heads has been quantified by the Hon'ble Supreme Court in the aforementioned rulings and held that the amount towards funeral expenses and loss of estate to be Rs.15,000/- each and Rs.40,000/- towards loss of consortium.

9. The concept of 'consortium' has been further explained by the Apex Court in ***Magma General Insurance Company Limited vs Nanu Ram Alias Chuhru Ram & Others*** reported in **(2018) 18 SCC 130**. It can be of three types; **Parental consortium** (payable to children because of the death of parents); **Spousal consortium** (payable to the spouse because of the death of the partner) and **Filial consortium** (payable to the parents because of the death of children).

10. The Claimants are the widow and children of the deceased, hence the claimants are entitled for loss of spousal and parental consortium. So far as the submission made by the learned counsel for the Appellants with regard to the exoneration of the Insurance Company, the learned Claims Tribunal taking into consideration the copy of license as Ex.P-1, the investigation report of the investigator as Ex.P/2C where in it is mentioned that the Non-Applicant No.1 was possessed with the license to drive motorcycle and light motor vehicle. The learned Claims Tribunal taken note of the copy of insurance policy-cum-certificate wherein, the type of the vehicle has been mentioned as goods vehicle has arrived at a conclusion that the offending vehicle was a light goods vehicle but considering the license of the Non-Applicant No.1 authorizing him to drive light motor vehicle has held that the license possessed by the Non-Applicant No.1 does not show the endorsement to drive the good vehicle/transport vehicle and held that there was breach of policy conditions. The issue with regard to the person possessed with the license to drive the light motor vehicle and found driving the commercial vehicle or goods vehicle of the same category or class has

been dealt with by Hon'ble Supreme Court in case of **Mukund Dewangan (*supra*)** and held thus:

> "60.4.The effect of amendment of Form 4 by insertion of "transport vehicles" is related only to the categories which were substituted in the year 1994 and the procedure to obtain driving licence for transport vehicle of class of "light motor vehicle" continues to be the same as it was and has not been changed and there is no requirement to obtain separate endorsement to drive transport vehicle, and if a driver is holding licence to drive light motor vehicle, he can drive transport vehicle of such class without any endorsement to that effect."

11. The Hon'ble Supreme Court in case of the ***M.S. Bhati Vs. National Insurance Company Limited*** reported in **(2019) 12 SCC 248** has taken note of the fact that the decision of **Mukund Dewangan *(supra)*** is pending for reconsideration by a Larger Bench in case of ***M/s. Bajaj Alliance General Insurance Company Limited Vs. Rambha Devi & Others*** reported in **(2019) 12 SCC 816** and held that the Court is bound to follow the decision of **Mukund Dewangan *(supra)*** as it continues to hold the field.

12. In view of the aforementioned facts, and ruling of the Hon'ble Supreme Court we hold that the learned Claims Tribunal erred in arriving at a finding that on the date of the accident, Non-Applicant No.1 was not possessed with valid and effective driving license to drive the offending vehicle and there was breach of policy conditions. The finding on issue No.4 recorded by Tribunal is not sustainable and is set aside. Now the liability to satisfy the amount of compensation shall be upon the Respondent No.2/Insurance Company. In preceding paragraph, we have held that the Tribunal has not computed the amount of compensation properly hence we are recomputing the amount of compensation as below.

13. Income of the deceased assessed by this Court is Rs.4,000/- per month and Rs.48,000/-. Upon adding 10% towards future prospects as held by Hon'ble Supreme Court in case of **Pranay Sethi *(supra)*** total yearly income will be Rs.48,000 + (48,000 x 10%) = 52,800/-. After deducting 1/3rd towards

personal and living expenses Rs.17,600 (52,800 x 1/3) loss of yearly dependency will be Rs.35,200/-. Upon applying multiplier of 9 to the yearly loss of dependency total loss of dependency will come to Rs.3,16,800/-. In addition to the amount of compensation on the head of loss of dependency Claimants are further entitled for **Rs. 40,000/-** towards loss of Spousal Consortium, **Rs.40,000/-** towards loss of Parental Consortium, **Rs. 15,000/-** towards loss of estate and **Rs.15,000/-** toward funeral expenses. Now, the Claimants shall be entitled for total sum of **Rs.4,26,800/**- **(Four Lac Twenty Six Thousand and Eight Hundred Only)** as compensation. The aforementioned amount of compensation shall carry interest @ 8% from the date of filing of the application till its realization. The liability to satisfy the amount of compensation shall be upon the Respondent No.2/Insurance Company.

14. For the foregoing reasons, the appeal is allowed and impugned award is modified to the extent as indicated above.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

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